

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CANDELARIO PEREZ, individually	)	
and on behalf of his minor	)	NO. CV-09-0159-LRS
step-child, J.P., his minor	)	
child, Y.P., and his minor	)	ORDER DENYING PLAINTIFFS'
step-grandchild, T.E.,	)	MOTION TO DISMISS
	)	AFFIRMATIVE DEFENSES
Plaintiffs,	)	
	)	
v.	)	
	)	
THG CONSTRUCTION, LLC,	)	
	)	
Defendant.	)	

BEFORE THE COURT is Plaintiffs' Motion to Dismiss the Affirmative Defenses Pleased by Defendant THG Construction in its Answer to Plaintiffs' Amended Complaint, Ct. Rec. 12, filed August 11, 2009 and noted without oral argument on September 30, 2009.

Plaintiffs assert that in pleading affirmative defenses in paragraphs 1-7 in Defendant's Answer to Amended Complaint (Ct. Rec. 10 at 6), Defendant THG Construction LLC did not provide any facts in support of them. Plaintiff theorizes that because the affirmative defenses allegedly lack a factual basis, said defenses amount to nothing more than mere legal conclusions. Ct. Rec. 12 at 2.

Defendant responds that Plaintiffs' motion to dismiss should be denied for the following reasons: 1) THG's affirmative defenses are

1 sufficiently pled under Rule 8(c) in that they provide sufficient  
2 notice to put Plaintiffs on fair notice of the nature of the  
3 defenses pleaded; 2) Plaintiffs' motion is premature in that no  
4 discovery has been completed to date; and 3) Plaintiffs' motion is  
5 moot based on THG's timely Amended Answer which provides sufficient  
6 factual bases to survive any Rule 12(c) challenge. Defendant  
7 further argues that the cases cited by Plaintiffs in support of the  
8 motion are clearly distinguishable in that they concern pleading  
9 claims under Rule 8(a) rather than pleading affirmative defenses.  
10 Defendant alternatively argues that if the Court determines that any  
11 of THG's affirmative defenses are insufficient, it requests leave to  
12 further amend those affirmative defenses.

13 The Court finds that Defendant has complied with Rule 8(c) and  
14 has put opposing parties on notice of affirmative defenses. The  
15 Court finds that the level of detail sought by Plaintiffs, prior to  
16 discovery being conducted, is not required of the Federal Rules of  
17 Civil Procedure. Defendant's Amended Answer appears to adequately  
18 supplement its affirmative defenses which provide sufficient facts  
19 based on the limited information presently available to Defendant  
20 THG to put Plaintiffs on notice of the nature of the defenses  
21 pleaded. The Court expresses no opinion on the issue of whether any  
22 of the affirmative defenses currently alleged will survive a later  
23 motion for summary judgment/dismissal following further discovery.  
24 Accordingly,

25 **IT IS ORDERED:**

26 1. Plaintiffs' Motion to Dismiss the Affirmative Defenses  
27 Pleaded by Defendant THG Construction in its Answer to Plaintiffs'  
28 Amended Complaint, **Ct. Rec. 12**, is **DENIED**.

*s/Lonny R. Suko*

ORDER - 3